

Commission has full authority to fashion appropriate sanctions for violations of its protective orders, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to confidential information in Commission proceedings.

(1) *Petitions for temporary standstill.* (1) A program access complainant seeking renewal of an existing programming contract may file a petition along with its complaint requesting a temporary standstill of the price, terms, and other conditions of the existing programming contract pending resolution of the complaint. In addition to the requirements of § 76.7, the complainant shall have the burden of proof to demonstrate the following in its petition:

- (i) The complainant is likely to prevail on the merits of its complaint;
- (ii) The complainant will suffer irreparable harm absent a stay;
- (iii) Grant of a stay will not substantially harm other interested parties; and
- (iv) The public interest favors grant of a stay.

(2) The defendant cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a petition for temporary standstill is served shall answer within ten (10) days of service of the petition, unless otherwise directed by the Commission.

(3) If the Commission grants the temporary standstill, the Commission's decision acting on the complaint will provide for remedies that make the terms of the new agreement between the parties retroactive to the expiration date of the previous programming contract.

[64 FR 6572, Feb. 10, 1999, as amended at 67 FR 13235, Mar. 21, 2002; 72 FR 56661, Oct. 4, 2007; 75 FR 9724, Mar. 3, 2010]

§ 76.1004 Applicability of program access rules to common carriers and affiliates.

(a) Any provision that applies to a cable operator under §§ 76.1000 through 76.1003 shall also apply to a common carrier or its affiliate that provides video programming by any means directly to subscribers. Any such provision that applies to a satellite cable

programming vendor in which a cable operator has an attributable interest shall apply to any satellite cable programming vendor in which such common carrier has an attributable interest. For the purposes of this section, two or fewer common officers or directors shall not by itself establish an attributable interest by a common carrier in a satellite cable programming vendor (or its parent company) or a terrestrial cable programming vendor (or its parent company).

(b) Sections 76.1002(c)(1) through (3) shall be applied to a common carrier or its affiliate that provides video programming by any means directly to subscribers in such a way that such common carrier or its affiliate shall be generally restricted from entering into an exclusive arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a common carrier or its affiliate has an attributable interest or a satellite broadcast programming vendor in which a common carrier or its affiliate has an attributable interest, unless the arrangement pertains to an area served by a cable system as of October 5, 1992, and the Commission determines in accordance with Section § 76.1002(c)(4) that such arrangement is in the public interest.

[61 FR 18980, Apr. 30, 1996, as amended at 61 FR 28708, June 5, 1996; 75 FR 9724, Mar. 3, 2010]

§§ 76.1005–76.1010 [Reserved]

Subpart P—Competitive Availability of Navigation Devices

SOURCE: 63 FR 38094, July 15, 1998, unless otherwise noted.

§ 76.1200 Definitions.

As used in this subpart:

(a) *Multichannel video programming system.* A distribution system that makes available for purchase, by customers or subscribers, multiple channels of video programming other than an open video system as defined by § 76.1500(a). Such systems include, but are not limited to, cable television systems, BRS/EBS systems, direct broadcast satellite systems, other systems

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for providing direct-to-home multichannel video programming via satellite, and satellite master antenna systems.

(b) *Multichannel video programming distributor.* A person such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, or a television receive-only satellite program distributor, who owns or operates a multichannel video programming system.

(c) *Navigation devices.* Devices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.

(d) *Affiliate.* A person or entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person, as defined in the notes accompanying § 76.501.

(e) *Conditional access.* The mechanisms that provide for selective access and denial of specific services and make use of signal security that can prevent a signal from being received except by authorized users.

[63 FR 38094, July 15, 1998, as amended at 69 FR 72046, Dec. 10, 2004]

§ 76.1201 Rights of subscribers to use or attach navigation devices.

No multichannel video programming distributor shall prevent the connection or use of navigation devices to or with its multichannel video programming system, except in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices may be used to assist or are intended or designed to assist in the unauthorized receipt of service.

§ 76.1202 Availability of navigation devices.

No multichannel video programming distributor shall by contract, agreement, patent right, intellectual property right or otherwise prevent navigation devices that do not perform conditional access or security functions from being made available to subscribers from retailers, manufacturers, or other vendors that are unaffiliated

with such owner or operator, subject to § 76.1209.

§ 76.1203 Incidence of harm.

A multichannel video programming distributor may restrict the attachment or use of navigation devices with its system in those circumstances where electronic or physical harm would be caused by the attachment or operation of such devices or such devices that assist or are intended or designed to assist in the unauthorized receipt of service. Such restrictions may be accomplished by publishing and providing to subscribers standards and descriptions of devices that may not be used with or attached to its system. Such standards shall foreclose the attachment or use only of such devices as raise reasonable and legitimate concerns of electronic or physical harm or theft of service. In any situation where theft of service or harm occurs or is likely to occur, service may be discontinued.

§ 76.1204 Availability of equipment performing conditional access or security functions.

(a)(1) A multichannel video programming distributor that utilizes navigation devices to perform conditional access functions shall make available equipment that incorporates only the conditional access functions of such devices. Commencing on July 1, 2007, no multichannel video programming distributor subject to this section shall place in service new navigation devices for sale, lease, or use that perform both conditional access and other functions in a single integrated device.

(2) The foregoing requirement shall not apply:

(i) With respect to unidirectional navigation devices without recording functionality; or

(ii) To a multichannel video programming distributor that supports the active use by subscribers of navigation devices that:

(A) Operate throughout the continental United States, and

(B) Are available from retail outlets and other vendors throughout the United States that are not affiliated with the owner or operator of the multichannel video programming system.

(b) Conditional access function equipment made available pursuant to paragraph (a)(1) of this section shall be designed to connect to and function with other navigation devices available through the use of a commonly used interface or an interface that conforms to appropriate technical standards promulgated by a national standards organization.

(c) No multichannel video programming distributor shall by contract, agreement, patent, intellectual property right or otherwise preclude the addition of features or functions to the equipment made available pursuant to this section that are not designed, intended or function to defeat the conditional access controls of such devices or to provide unauthorized access to service.

(d) Notwithstanding the foregoing, navigation devices need not be made available pursuant to this section where:

(1) It is not reasonably feasible to prevent such devices from being used for the unauthorized reception of service; or

(2) It is not reasonably feasible to separate conditional access from other functions without jeopardizing security.

(e) The requirements of this section shall become applicable on July 1, 2000.

(f) Paragraphs (a)(1), (b), and (c) of this section shall not apply to the provision of any navigation device that:

(1) Employs conditional access mechanisms only to access analog video programming;

(2) Is capable only of providing access to analog video programming offered over a multichannel video programming distribution system; and

(3) Does not provide access to any digital transmission of multichannel video programming or any other digital service through any receiving, decoding, conditional access, or other function, including any conversion of digital programming or service to an analog format.

[63 FR 38095, July 15, 1998, as amended at 64 FR 29600, June 2, 1999; 68 FR 35822, June 17, 2003; 70 FR 36052, June 22, 2005; 76 FR 40279, July 8, 2011]

§ 76.1205 CableCARD support.

(a) Technical information concerning interface parameters that are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request in a timely manner.

(b) A multichannel video programming provider that is subject to the requirements of § 76.1204(a)(1) must:

(1) Provide the means to allow subscribers to self-install the CableCARD in a CableCARD-reliant device purchased at retail and inform a subscriber of this option when the subscriber requests a CableCARD. This requirement shall be effective August 1, 2011, if the MVPD allows its subscribers to self-install any cable modems or operator-leased set-top boxes and November 1, 2011 if the MVPD does not allow its subscribers to self-install any cable modems or operator-leased set-top boxes;

(i) This requirement shall not apply to cases in which neither the manufacturer nor the vendor of the CableCARD-reliant device furnishes to purchasers appropriate instructions for self-installation of a CableCARD, and a manned toll-free telephone number to answer consumer questions regarding CableCARD installation but only for so long as such instructions are not furnished and the call center is not offered;

(ii) [Reserved]

(2) Effective August 1, 2011, provide multi-stream CableCARDS to subscribers, unless the subscriber requests a single-stream CableCARD;

(3) With respect to professional installations, ensure that the technician arrives with no fewer than the number of CableCARDS requested by the customer and ensure that all CableCARDS delivered to customers are in good working condition and compatible with the customer's device;

(4) Effective August 1, 2011, provide, through the use of a commonly used interface and published specifications for communication, CableCARD-reliant, firmware-upgradable navigation devices the ability to tune simultaneously as many switched-digital channels as the greatest number of streams supported by any set-top box provided

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by the cable operator, or four simultaneous channels, whichever is greater;

(5) Separately disclose to consumers in a conspicuous manner with written information provided to customers in accordance with § 76.1602, with written or oral information at consumer request, and on Web sites or billing inserts;

(i) Any assessed fees for the rental of single and additional CableCARDS and the rental of operator-supplied navigation devices; and,

(ii) If such provider includes equipment in the price of a bundled offer of one or more services, the fees reasonably allocable to:

(A) The rental of single and additional CableCARDS; and

(B) The rental of operator-supplied navigation devices.

(1) CableCARD rental fees shall be priced uniformly throughout a cable system by such provider without regard to the intended use in operator-supplied or consumer-owned equipment. No service fee shall be imposed on a subscriber for support of a subscriber-provided device that is not assessed on subscriber use of an operator-provided device.

(2) For any bundled offer combining service and an operator-supplied navigation device into a single fee, including any bundled offer providing a discount for the purchase of multiple services, such provider shall make such offer available without discrimination to any customer that owns a navigation device, and, to the extent the customer uses such navigation device in lieu of the operator-supplied equipment included in that bundled offer, shall further offer such customer a discount from such offer equal to an amount not less than the monthly rental fee reasonably allocable to the lease of the operator-supplied navigation device included with that offer. For purposes of this section, in determining what is “reasonably allocable,” the Commission will consider in its evaluation whether the allocation is consistent with one or more of the following factors:

(i) An allocation determination approved by a local, state, or Federal government entity;

(ii) The monthly lease fee as stated on the cable system rate card for the navigation device when offered by the cable operator separately from a bundled offer; and

(iii) The actual cost of the navigation device amortized over a period of no more than 60 months.

(c) A cable operator shall not provide misleading information regarding the ability of navigation devices to access switched digital channels.

[76 FR 40279, July 8, 2011]

§ 76.1206 Equipment sale or lease charge subsidy prohibition.

Multichannel video programming distributors offering navigation devices subject to the provisions of § 76.923 for sale or lease directly to subscribers, shall adhere to the standards reflected therein relating to rates for equipment and installation and shall separately state the charges to consumers for such services and equipment.

§ 76.1207 Waivers.

The Commission may waive a regulation adopted under this subpart for a limited time, upon an appropriate showing by a provider of multichannel video programming and other services offered over multichannel video programming systems, or an equipment provider that such a waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. Such waiver requests should be made pursuant to § 76.7. Such a waiver shall be effective for all service providers and products in the category in which the waiver is granted.

§ 76.1208 Sunset of regulations.

The regulations adopted under this subpart shall cease to apply when the Commission determines that (1) the market for multichannel video distributors is fully competitive; (2) the market for converter boxes, and interactive communications equipment, used in conjunction with that service is fully competitive; and (3) elimination of the regulations would promote competition and the public interest. Any

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interested party may petition the Commission for such a determination.

§ 76.1209 Theft of service.

Nothing in this subpart shall be construed to authorize or justify any use, manufacture, or importation of equipment that would violate 47 U.S.C. 553 or any other provision of law intended to preclude the unauthorized reception of multichannel video programming service.

§ 76.1210 Effect on other rules.

Nothing in this subpart affects § 64.702(d) of the Commission's regulations or other Commission regulations governing interconnection and competitive provision of customer premises equipment used in connection with basic common carrier communications services.

Subpart Q—Regulation of Carriage Agreements

SOURCE: 58 FR 60395, Nov. 16, 1993, unless otherwise noted.

§ 76.1300 Definitions.

As used in this subpart:

(a) *Affiliated*. For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(b) *Attributable interest*. The term “attributable interest” shall be defined by reference to the criteria set forth in Notes 1 through 5 to § 76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(c) *Buying groups*. The term “buying group” or “agent,” for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

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(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(d) *Multichannel video programming distributor*. The term “multichannel video programming distributor” means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

(e) *Video programming vendor*. The term “video programming vendor” means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

[58 FR 60395, Nov. 16, 1993, as amended at 64 FR 67197, Dec. 1, 1999; 69 FR 72046, Dec. 10, 2004]

§ 76.1301 Prohibited practices.

(a) *Financial interest*. No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or more of such operator's/provider's systems.

(b) *Exclusive rights*. No cable operator or other multichannel video programming distributor shall coerce any video programming vendor to provide, or retaliate against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(c) *Discrimination*. No multichannel video programming distributor shall engage in conduct the effect of which is